

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Richard Lowery, on behalf of himself
and others similarly situated,

Plaintiff,

v.

Texas A&M University System, et al.,

Defendants.

Civil Action No.
4:22-cv-3091

JUDGE CHARLES ESKRIDGE

DECLARATION OF JONATHAN F. MITCHELL

1. My name is Jonathan F. Mitchell. I am over the age of 18 and fully competent in all respects to make this declaration.

2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and correct.

3. I represent plaintiff Richard Lowery in this litigation, and I submit this declaration in support of Mr. Lowery's reply brief in support of his motion for leave to file a second amended complaint (ECF No. 43).

4. The defendants' brief opposing leave to amend criticizes the notices to the court that Mr. Lowery filed on July 23, 2023, July 27, 2023, and August 1, 2023 (Docket Entries 39, 40, and 41), as well as the declarations submitted by Adam Kolasinski in support of the plaintiff's proposed second amended complaint (Docket Entry 37-8), the plaintiff's brief opposing mootness (Docket Entry 38-2), and the plaintiff's notice to the court of August 1, 2023 (Docket Entry 41-2). It insinuates that Mr. Lowery and his counsel previously knew about the facts alleged in those notices and in Professor Kolasinski's declarations yet deliberately concealed them from the Court, and are springing them on the Court now in an effort to avoid a mootness

dismissal. *See* Defs.’ Br., ECF No. 42, at 5 n.2 (“All of Plaintiff’s ‘new’ information, it follows, was readily available to Plaintiff well before he *first* amended his complaint—from a source who apparently wants to litigate his own grievances by proxy—and Plaintiff is strategically bringing it forward now in an effort to stave off dismissal.”).

5. The defendants’ insinuation is ad hominem and false. I first learned of the facts described in Professor Kolasinski’s declaration of July 12, 2023, on July 11, 2023—the day before Professor Kolasinski executed his declaration.

6. I first learned of the facts described in Professor Kolasinski’s declaration of August 1, 2023, on August 1, 2023—the same day on which the declaration was executed and filed.

7. All other facts described in the notices to the court that were filed on July 23, 2023, July 27, 2023, and August 1, 2023 (Docket Entries 39, 40, and 41), came to my awareness only days before we filed the notices with the court. Indeed, the facts surrounding Kathleen Banks’s resignation as president of Texas A&M, the actions of acting president Mark A. Welsh III upon taking office, and the reappointment letter sent to Professor Kolasinski on July 31, 2023, did not even occur until only 1–3 days before the corresponding notices were filed.

8. I am obligated as an attorney and as an officer of the court to promptly inform this Court of facts relevant to mootness. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 66 n.23 (1997). The notices that we filed and the supporting declarations of Professor Kolasinski are consistent with that obligation.

This concludes my sworn statement. I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 14, 2023


JONATHAN F. MITCHELL